

BILL NUMBER: AB 438 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 13, 2005

INTRODUCED BY Assembly Member Parra

FEBRUARY 15, 2005

An act to amend Section 290.46 of the Penal Code, relating to sex offenders.

LEGISLATIVE COUNSEL'S DIGEST

AB 438, as amended, Parra. Sex offenders.

Existing law provides that the Department of Justice shall make available information concerning specified registered sex offenders to the public via an Internet Web site. Existing law provides, with respect to certain sex offenders, that the address at which the person resides shall be made available. Existing law requires that every lease or rental agreement for residential real property and every contract for sale of residential real property, as specified, contain a notice that this information is maintained by law enforcement authorities.

This bill would provide that based upon the information made available to the public via the department Web site, a lessor of residential real property may refuse to provide housing to, or evict, a sex offender whose residence address is made available on the Web site. This bill would also provide that a lessor may inform other residents of that residential real property that a person whose residence address is made available on the Internet Web site also resides in the residential real property.

Existing law ~~also~~ requires the department to update the Web site on an ongoing basis.

This bill would require ~~the department~~ local law enforcement to update the Web site ~~when appropriate to correct the address of a registered sex offender within 30 days of receiving notice from a residential property owner that the registered sex offender no longer resides at the address listed on the Web site~~ and to seek to verify whether a registered sex offender no longer resides at the address listed on the Web site within a reasonable time after receiving a written notice indicating that the registered sex offender no longer resides at the address from the current owner of the residential real property that is listed on the Web site as the home address of the registered sex offender .

Because this bill would require local official to perform new duties, this bill would create a state-mandated, local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates

determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ yes .

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 290.46 of the Penal Code is amended to read:

290.46. (a) On or before the dates specified in this section, the Department of Justice shall make available information concerning persons who are required to register pursuant to Section 290 to the public via an Internet Web site as specified in this section. The department shall update the Web site on an ongoing basis. All information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the Web site. The name or address of the person's employer and the listed person's criminal history other than the specific crimes for which the person is required to register shall not be included on the Web site. The Web site shall be translated into languages other than English as determined by the department.

(b) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in this subdivision or the statutory predecessors of any of these offenses, or any offense which, if committed or attempted to be committed in this state, would have been punishable as one or more of the offenses listed in this subdivision, the Department of Justice shall make available to the public via the Internet Web site his or her names and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the address at which the person resides, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a).

(2) This subdivision shall apply to the following offenses:

(A) Subdivision (b) of Section 207.

(B) Subdivision (b) of Section 209, except kidnapping to commit robbery.

(C) Paragraph (2) or (6) of subdivision (a) of Section 261.

(D) Section 264.1.

(E) Section 269.

(F) Subdivision (c) or (d) of Section 286.

(G) Subdivision (a), (b), or (c) of Section 288, provided that the offense is a felony.

(H) Subdivision (c) or (d) of Section 288a.

(I) Section 288.5.

(J) Subdivision (a) or (j) of Section 289.

(3) This subdivision shall also apply to any person who has ever been adjudicated a sexually violent predator as defined in Section 6600 of the Welfare and Institutions Code.

(c) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in paragraph (2) or the statutory predecessors of any of these offenses, or any offense which, if committed or attempted to be committed in this state, would have been

punishable as one or more of the offenses listed in this subdivision, the Department of Justice shall make available to the public via the Internet Web site his or her names and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a). However, the address at which the person resides shall not be disclosed until a determination is made that the person is, by virtue of his or her additional prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290, subject to this subdivision. On or before July 1, 2006, the Department of Justice shall determine whether any person convicted of an offense listed in paragraph (2) also has one or more prior or subsequent convictions of an offense listed in paragraph (2) of subdivision (a) of Section 290, and, for those persons, the Department of Justice shall make available to the public via the Internet Web site the address at which the person resides.

(2) This subdivision shall apply to the following offenses, provided that the person has one or more prior or subsequent convictions of an offense listed in paragraph (2) of subdivision (a) of Section 290:

(A) Section 220, except assault to commit mayhem.

(B) Paragraph (1), (3), or (4) of subdivision (a) of Section 261.

(C) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 286.

(D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 288a.

(E) Subdivision (b), (d), (e), or (i) of Section 289.

(d) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in this subdivision or the statutory predecessors of any of these offenses, or of any offense which, if committed or attempted to be committed in this state, would have been punishable as one or more of the offenses listed in this subdivision, the Department of Justice shall make available to the public via the Internet Web site his or her names and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a) or the address at which the person resides.

(2) This subdivision shall apply to the following offenses:

(A) Section 220, except assault to commit mayhem, with no prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290.

(B) Subdivision (a) of Section 243.4, provided that the offense is a felony.

(C) Paragraph (1), (3), or (4) of subdivision (a) of Section 261, with no prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290.

(D) Section 266, provided that the offense is a felony.

(E) Section 266c, provided that the offense is a felony.

(F) Section 266j.

(G) Section 267.

(H) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 286, with no prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290.

(I) Subdivision (c) of Section 288, provided that the offense is a misdemeanor.

(J) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 288a, with no prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290.

(K) Subdivision (b), (d), (e), or (i) of Section 289, with no prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290.

(L) Section 647.6.

(e) (1) If a person has been convicted of the commission or the attempted commission of any of the offenses listed in this subdivision or the statutory predecessors of any of these offenses, or of any offense which, if committed or attempted to be committed in this state, would have been punishable as one or more of the offenses listed in this subdivision, and he or she has been convicted of no other offense listed in subdivision (b), (c), or (d) other than those listed in this subdivision, that person may file an application for exclusion from the Internet Web site with the Department of Justice. If the department determines that the person meets the requirements of this subdivision, the department shall grant the exclusion and no information concerning him or her shall be made available via the Internet Web site described in this section. He or she bears the burden of proving the facts that make him or her eligible for exclusion from the Internet Web site. However, a person who has filed for or been granted an exclusion from the Internet Web site is not relieved of his or her duty to register as a sex offender pursuant to Section 290 nor from any otherwise applicable provision of law.

(2) This subdivision shall apply to the following offenses:

(A) A felony violation of subdivision (a) of Section 243.4.

(B) Section 647.6, provided the offense is a misdemeanor.

(C) An offense listed in subdivision (b), (c), or (d) if the offender is eligible for, granted, and successfully completes probation pursuant to Section 1203.066 of the Penal Code.

(f) The Department of Justice shall make a reasonable effort to provide notification to persons who have been convicted of the commission or attempted commission of an offense specified in subdivision (b), (c), or (d), that on or before July 1, 2005, the department is required to make information about him or her available to the public via an Internet Web site as specified in this section. The Department of Justice shall also make a reasonable effort to provide notice that he or she may be eligible for exclusion from the Internet Web site if he or she may have been convicted of an offense for which exclusion is available pursuant to subdivision (e).

(g) Notwithstanding Section 6254.5 of the Government Code, disclosure of information pursuant to this section is not a waiver of exemptions under Chapter 3.5 (commencing with Section 6250) of Title 1 of Division 7 of the Government Code and does not affect other statutory restrictions on disclosure in other situations.

(h) (1) Any person who uses information disclosed pursuant to the Internet Web site to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than ten thousand dollars (\$10,000) and not more than fifty thousand

dollars (\$50,000).

(2) Any person who uses information disclosed pursuant to the Internet Web site to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison.

(i) Any person who is required to register pursuant to Section 290 who enters the Web site is punishable by a fine not exceeding one thousand dollars (\$1,000), imprisonment in a county jail for a period not to exceed six months, or by both that fine and imprisonment.

(j) (1) A person is authorized to use information disclosed pursuant to this section only to protect a person at risk.

(2) (A) *Based upon the information disclosed pursuant to this section, a lessor or an agent of a lessor of residential real property may, but is not required to, refuse to provide housing to or evict a sex offender whose residence address must be made available to the public pursuant to this section. Based upon the information disclosed pursuant to this section, a lessor or an agent of the lessor of residential real property may, but is not required to, inform other residents that a person whose residence address must be made available to the public pursuant to this section also resides in the residential real property.*

(B) *However, nothing in subparagraph (A) shall be construed to do any of the following:*

(i) *Diminish in any way any power or right that any person, including, but not limited to, any service provider or lessor of residential real property, may have, pursuant to paragraph (1) of subdivision (j) of this section, to use information disclosed pursuant to this section to protect a person at risk from a an individual who is required to register as a sex offender pursuant to Section 290, including those persons whose residence address is not made available to the public pursuant to this section.*

(ii) *Diminish in any way any power or right that any person, including, but not limited to, any service provider or lessor of residential real property, may have, pursuant to this section, or any other provision of statutory or decisional law to deny services, housing, privileges, benefits, or otherwise discriminate against persons who are required to register pursuant to this section, including those persons whose address of residence is not made available to the public pursuant to this section.*

(3) Except as authorized under paragraph (1) or (2), or any other provision of law, use of any information that is disclosed pursuant to this section for purposes relating to any of the following is prohibited:

(A) Health insurance.

(B) Insurance.

(C) Loans.

(D) Credit.

(E) Employment.

(F) Education, scholarships, or fellowships.

(G) Housing or accommodations.

(H) Benefits, privileges, or services provided by any business establishment.

~~—(3)—~~

(4) This section shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections

11105 and 11105.3, Section 8808 of the Family Code, Sections 777.5 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

~~—(4)—~~

(5) *This section shall not be construed to make a persons who is required to register as a sex offender pursuant to Section 290 a member of a protected class or to make registered sex offenders a protected class under any provision of statutory or decisional law, nor shall it be construed to otherwise confer any right or privilege on any person that is required to register as a sex offender pursuant to Section 290.*

(6) (A) Any use of information disclosed pursuant to this section for purposes other than those provided by ~~paragraph (1) or in violation of paragraph (2)~~ paragraph (1) or (2), or in violation of paragraph (3) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars (\$250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars (\$25,000).

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the information available via the Internet Web site in violation of paragraph ~~—(2)—~~ (3) , the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.

~~—(k) The Department of Justice shall update the Web site when appropriate to correct the address of a registered sex offender within 30 days of receiving notice from a residential property owner, on a form as may be determined by the department, that the registered sex offender no longer resides at the address listed on the Web site.~~

(k) *Local law enforcement agencies shall update the sex offender database and seek to verify whether a registered sex offender no longer resides at the address listed on the Web site within a reasonable time after receiving a written notice indicating that the registered sex offender no longer resides at the address from the current owner of the residential real property that is listed on the Web site as the home address of the registered sex offender.*

(l) On or before July 1, 2006, and every year thereafter, the Department of Justice shall make a report to the Legislature concerning the operation of this section.

(m) The Department of Justice and its employees shall be immune from liability for good faith conduct under this section.

(n) *Other than the duty to provide a notice in every lease or rental agreement for residential real property and every contract for sale of residential real property pursuant to Section 2079.10a of*

the Civil Code, a lessor, seller, or broker of residential real property has no duty to inquire, investigate, or disclose any information regarding a person who is required to register as a sex offender pursuant to this section. Notwithstanding this section nor any other provision of law, a lessor of residential real property has no duty to evict, deny housing, to, or to otherwise discriminate against a person because that person is required to register pursuant to Section 290.

(o) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.